

**REMARKS**

Applicants have carefully reviewed the Application in light of the Office Action mailed December 20, 2004. At the time of the Office Action, Claims 1-41 were pending in the Application. Applicants amend Claims 1, 7, 9, 11, 21, 30, 39, and 40 and cancel Claims 8, 17, 26, and 35, without prejudice or disclaimer. Applicants respectfully request reconsideration of the pending claims and favorable action in this case.

**Section 102 Rejection**

The Examiner rejects Claims 1-4, 6-7, 9, 11-13, 15-16, 18, 21-23, 25-26, 28-32, 34-35, 37, and 39-41 under 35 U.S.C. §102(b), as being anticipated by U.S. Patent No. 5,943,347 issued to Shepard (hereinafter "*Shepard*"). Applicants respectfully request reconsideration of this rejection of the above-mentioned claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. *Shepard* does not disclose, teach, or suggest, either expressly or inherently, each and every element of the claims.

Applicants amend Claim 1 to include limitations of Claim 8. *Shepard* fails to disclose, teach, or suggest, each and every element of Applicants' amended Claim 1, either expressly or inherently. The Examiner admits that *Shepard* "does not provide an attenuation factor that increases with each subsequent packet loss." *Office Action*, p. 10. Because *Shepard* fails to teach at least this limitation, Applicants respectfully submit that *Shepard* cannot anticipate Claim 1 under 35 U.S.C. §102(b). Thus, Applicants respectfully request reconsideration and allowance of independent Claim 1 and its dependents.

Independent Claims 11 and 39 each recite certain limitations that, for reasons substantially similar to those discussed with reference to independent Claim 1, *Shepard* does not disclose, teach, or suggest, either expressly or inherently. Therefore, Applicants respectfully request reconsideration and allowance of independent Claims 11 and 39 together with their dependents.

Applicants amend Claim 7 to be in independent form. *Shepard* fails to disclose, teach, or suggest, each and every element of Applicants' Claim 7, either expressly or inherently. For example, Claim 7 includes that "the voice parameter is received in a first

packet and the first voice samples are received in a second packet separate from the first packet.” Because *Shepard* fails to teach at least this limitation, Applicants respectfully submit that *Shepard* cannot anticipate Claim 7 under 35 U.S.C. §102(b). Thus, Applicants respectfully request reconsideration and allowance of independent Claim 7.

Independent Claims 21, 30, and 40 each recite certain limitations that, for reasons substantially similar to those discussed with reference to independent Claim 7, *Shepard* does not disclose, teach, or suggest, either expressly or inherently. Therefore, Applicants respectfully request reconsideration and allowance of independent Claims 21, 30, and 40 together with their dependents.

Applicants amend Claim 9 to be in independent form. *Shepard* fails to disclose, teach, or suggest, each and every element of Applicants’ Claim 9, either expressly or inherently. For example, Claim 9 includes “determining a start point in a buffer storing the first voice samples that is one or more integer pitch periods before the beginning of the silence interval.” Because *Shepard* fails to teach at least this limitation, Applicants respectfully submit that *Shepard* cannot anticipate Claim 9 under 35 U.S.C. §102(b). Therefore, Applicants respectfully request reconsideration and allowance of independent Claim 7.

### **Section 103 Rejections**

The Examiner rejects Claims 5, 10, 14, 19-20, 24, 33, and 38 under 35 U.S.C. §103(a), as being unpatentable over *Shepard* in view of U.S. Patent No. 6,687,360 B2 issued to Kung et al. (hereinafter “*Kung*”). The Examiner rejects Claims 8, 17, 27, and 36 under 35 U.S.C. §103(a), as being unpatentable over *Shepard* in view of Liao et al. (i.e. an article entitled “Adaptive recovery techniques for real-time audio streams,” hereinafter “*Liao*”). To defeat a patent under 35 U.S.C. §103(a), the claimed *combination* must be obvious. *Kimberly-Clark Corp. v. Johnson & Johnson*, 745 F.2d 1437, 223 U.S.P.Q. 603 (Fed. Cir. 1984). Therefore, it is essential to view the invention as a whole, taking each element into account as well as the advantages, properties, utilities, and results of the invention. *In re Chupp*, 816 F.2d 643, 2 U.S.P.Q.2d 1437 (Fed. Cir. 1987).

Applicants respectfully submit that the combination of *Shepard* and *Kung* fails to disclose, teach, or suggest each limitation recited in Applicants’ Claims 5, 10, 14, 19-20, 24,

33, and 38. Dependent Claims 5 and 10, which depend on Claim 1; dependent Claims 14 and 19-20, which depend on Claim 11; dependent Claim 24, which depends on Claim 21; and dependent Claims 33 and 38, which depend on Claim 30 each include limitations of their respective independent claims, which have been shown to be allowable, and add additional elements that further distinguish the combination. The combination of *Shepard* and *Kung* does not disclose, teach, or suggest the limitations recited in Claims 5, 10, 14, 19-20, 24, 33, and 38. Accordingly, Applicants respectfully request reconsideration and allowance of these claims.

Applicants respectfully submit that the combination of *Shepard* and *Liao* fails to disclose, teach, or suggest each limitation recited in Applicants' Claims 8, 17, 27, and 36. Applicants amend Claim 1 to include the limitations of canceled Claim 8 and amend Claim 11 to include the limitations of canceled Claim 17. The combination of *Shepard* and *Liao* does not disclose, teach, or suggest "using an attenuation factor that increases with each subsequent packet loss." Claim 27, which depends on Claim 21, and Claim 36, which depends on Claim 30, each include limitations of their respective independent claims, which have been shown to be allowable, and add additional elements that further distinguish the combination. The combination of *Shepard* and *Liao* does not disclose, teach, or suggest the limitations recited in Claims 1, 11, 27, and 36. Therefore, Applicants respectfully request reconsideration and allowance of these claims.

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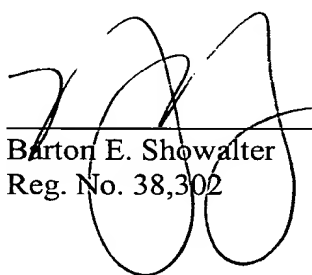
**CONCLUSION**

Applicants have now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicants respectfully request reconsideration and allowance of the pending claims.

Applicants believe no fee is due. However, if this is not the case, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicants invite the Examiner to contact its attorney, Barton E. Showalter, at (214) 953-6509.

Respectfully submitted,  
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